IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

LAND REVISION NO. 1 OF 2023

(Originating from District Land and Housing Tribunal Application No. 23/2014 and Misc. Appl. No. 140/2022 DHLT Babati)

SALIMU HASSAN..... APPLICANT

VERSUS

HASSAN ALLY MWANAKATWE

(Administrator of the Estate of the deceased Ally Hassan Mwanakatwe).....**RESPONDENT**

RULING

10th & 27th July, 2023

J. R. Kahyoza, J.

Salimu Hassan, the applicant is a son of Ally Hassan Mwanakatwe, the deceased. Ally Hassan Mwanakatwe sued Salim Hassan in 2014 before the District Land and Housing Tribunal (the **DLHT**) for trespass. He alleged that Salim Hassan had trespassed over his five (5) acres land. Before the suit was decided, Ally Hassan Mwanakatwe passed on. Hassan Ally Mwanakatwe became the administrator of the estate of Ally Hassan Mwanakatwe and prosecuted the suit to its conclusion. Hassan Ally Mwanakatwe (the administrator of the estate of the late Ally Hassan Mwanakatwe) won the day, in the judgment, which the **DHLT** delivered on 23/3/2023.

Salim Hassan did not take any action against the decision of the DHLT, which obviously, it did not amuse him as he lost his land. Salim Hassan did not rise from his deep slumber, until after the administrator applied for execution to seek his eviction, when he appealed to the High Court of Tanzania of Arusha Sub-Registry.

As lucky was not on his side, the High Court dismissed Salim Hassan's appeal on 20/12/2022. As a last punch, Salim Hassan instituted the instant application for revision. He prayed this Court to call and examine the correctness of the decision of the DLHT, which adjudged him a trespasser on the 23/3/2020 and an application for execution. The applicant and respondent fended for themselves before this Court.

Before the application was set down for hearing, Hassan Ally Mwanakatwe, the administrator of the late Ally Hassan Mwanakatwe's estate raised the preliminary objection to the effect that-

(1) The application is misconceived and bad in law for contravening the principle of law as the impugned decisions are appealable and not revisable.
(2) The application is incompetent on an abuse of court process as the applicant has already preferred an appeal against same decisions.
(3) The application is incompetent for being brought under non-existing provision of the law.

Parties argued the preliminary objection by way of written submissions. The issues for determination are-

1. Are the impugned decisions subject of revision?
2. Is the application an abuse of the court process?
3. Is the application incompetent for non-cation of the relevant provision of the law?

The respondent submitted that an application for revision is not an alternative to appeal despite the fact that both can have the same outcome. The applicant has not shown any prevailing circumstances that in one way or the other have prevented him from pursuing his appeal. To support his position, he cited the case of **Marcus Kihanga (As an Administrator of the late Letlea Kihanga) V. Godfrey Kibasa**, Land Rev. 06 of 2019 (unreported) where he held that-

> *"Basing on the above observation it is my considered opinion that the proper forum for the applicant, was to file an appeal and the reasons for revision he advanced would be grounds for appeal instead of filing an application for revision."*

He added that the **Moses J. Mwakibete v. the Editor Uhuru Shirika la Magazeti ya Chama & National Printing Center** [1995] TLR.134.

The applicant replied that his efforts for pursue his right aborted as the appeal he had lodged was struck out for being filed out of time. He submitted

that the only remedy was to apply for revision. He submitted that the cases the respondent cited are distinguishable.

Having reviewing the rival submissions, I wish to state that it is beyond dispute that, Salim Hassan, the applicant, was a party to the proceedings and judgment, which he seeks this Court to revise. He filed his defence and heard the evidence from Hassan Ally Mwanakatwe, the administrator of the late Ally Hassan Mwanakatwe's estate, was the applicant before the DLHT. However, when it came his turn to give evidence, the record shows that he declined because he had previously been adjudged owner of the disputed land. In short, he took part in the proceedings, he is seeking this Court to revise. Being a party, the applicant had an opportunity to appeal against the decision of the tribunal. The applicant was not vigilant. He slept on his right until the respondent applied for execution seeking his eviction when he rose from slumber. He appealed and lost. He then filed the current application for revision.

It is clear the applicant lodged the current appeal after two (2) years and ten (10) months from the date of the judgment he is seeking this Court to revise. Not only that but also, since he was a party, he has applied for revision as an alternative to appeal, it is trite law that revision is not an alternative to appeal. The position of the law is settled that if there is a right

of appeal, then, that right has to be pursued by the concerned party and, except for sufficient reason amounting to exceptional circumstances, there cannot be resort by the party to the revisional jurisdiction of the Court. See **Mansoor Daya Chemicals Limited v. National Bank of Commerce Ltd,** Civil Application No. 464/16 of 2014 and **Ms. Farhia Abdullar Noor v. ADVATECH Office Supplies Ltd and BOLSTO Solutions Ltd**, Civil Application No. 261/16 of 2017. Both cases referred to the decision of **Halais Pro-Chemie Vs Wella A.G** [1996] TLR 269. I find it settled that a party to the proceedings before the courts subordinate to this Court may institute revision proceedings in the following circumstances; **one**, *where, although he has a right of appeal, sufficient reason amounting to exceptional circumstance exists, which must be explained;* ***two****, where the appellate process has been blocked by judicial process;* ***three****, where is no right of appeal exists; or* ***four****, where a person was not party to the relevant proceedings.*

The applicant has not exhibited sufficient reason amounting to exceptional circumstances why he opted to apply for revision instead of appealing.

Is the application an abuse of the court process?

The respondent submitted that the applicant had previously filed an appeal against the decision of the tribunal. The Resident magistrate with extended jurisdiction determined the appeal. And that after the decision, the applicant was required to appeal to the Court of Appeal. He cited the case of **Mansoor Daya Chemicals Limited V. National Commercial Bank Ltd**, Civil Application No. 442/16 of 2014.

The applicant opposed the contention that he was abusing the process as he was pursuing his right as the appeal was dismissed for being time barred.

There is no dispute that the applicant pursued an appeal and that after the appeal was struck out, the applicant instituted the current application for revision. It has been submitted that the applicant's appeal was struck out. If it is true, the applicant was required to apply for extension of time and institute the appeal. The applicant had no justification to leave the process of appeal he had commenced which had not come to an end and institute an application for revision. Cases should come to an end.

Is the application incompetent for non-cation of the relevant provision of the law?

I wish to state at the outset that the position that wrong citation of the provision of law or rule under, which the application is grounded, renders the application incompetent, has since changed in the advent of the principle of overriding objective. In addition, following the amendments of the **Tanzania Court of Appeal Rules,** GN. No. 368/2009 (the Rules), the decisions cited to me are no longer good law. The new rule 48 of the Rules reads-

> *48.-(l) Subject to the provisions of sub-rule (3) and to any other rule allowing informal application, every application to the Court shall be by notice of motion supported by affidavit and shall cite the specific rule under which it is brought and state the ground for the relief sought:*
>
> *Provided that* ***where an application omits to cite any specific provision of the law or cites a wrong provision, but the jurisdiction to grant the order sought exists, the irregularity or omission can be ignored*** *and the Court may order that the correct law be inserted. (Emphasis added)*

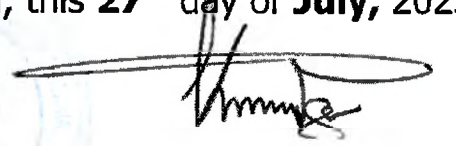
From the above cited rule, non-citation, or wrong citation of the enabling provision of the law is no longer fatal, provided the Court of Appeal, has jurisdiction to entertain the matter. I pray to borrow a leaf from rule 48

of the Rules, which do not apply to this Court. The applicant was duty bound to specify the provision(s) of the law or rule under which he grounded the application but non-citation of the provision is not fatal if the Court has jurisdiction to entertain the matter.

In the end, I sustain the preliminary objection and dismiss the application with costs. Since the respondent is not represented and the record shows that he prepared the submissions himself, to avoid endless litigation, I tax costs at Tzs. 150,000/= under item under item 44 of the Advocates (Remuneration) Order, 2015 GN. No. 263/2015.

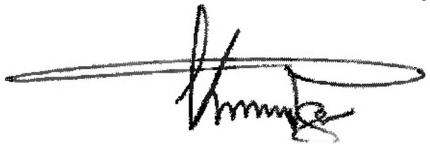
It is ordered accordingly.

Dated at **Babati**, this **27th** day of **July,** 2023.



J. R. Kahyoza
Judge

Court: Ruling delivered in the presence of the applicant and in the absence of the respondent. B/C Ms. Fatina Haymale (RMA) present.



J. R. Kahyoza
Judge
27/07/2023